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Supreme Court, U.S.
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No. _____

In the

Supreme Court of the United States

BERNARD FRYE,

Petitioner,

vs.

UNITED STEELWORKERS OF AMERICA, HARRY MAYFIELD, ROBERT JOHNS, JOSEPH COYLE, WILLIAM NOLLER, and LOCAL UNION 3489,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTION PRESENTED

1. Whether the Seventh Circuit holding that unions may discipline their members without ever advising them which union rules or policies they violated is consistent with section 101(a)(5)(A) of the Labor Management Reporting and Disclosure Act.

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JURISDICTION

The judgment of the Court of Appeals was made and entered on July 11, 1985. A timely Petition for Rehearing in banc was requested, being denied by the Court of Appeals by Order dated August 15, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. section 1254(1).

STATUTE INVOLVED

The statute involved in this case is section 101(a)(5) of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. § 411(a)(5), which provides:

> "No member of a labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

OPINIONS BELOW

The Opinion of the Court of Appeals is not yet reported. The Memorandum Order of the District Court is not reported. Both are reprinted in the Appendix.

STATEMENT OF THE CASE

Petitioner, Bernard Frye, a member of Local 3489, United Steelworkers of America (Local) from 1964 to 1981 was a prominent, long-time dissident within the United Steelworkers of America, International Union (International).

Frye served as President of the Local from June 1973 to July 1, 1976. During his term, two local members disputed his interpretation of the "temporary foreman" and "preferential seniority" provisions in the Local's collective bargaining agreement (agreement) with Stran Steel Corporation (Company). These members, abetted by Frye's local political opponents and the International's staff representative, respondent William Noller, filed internal union charges against Frye. The International Union eventually convicted Frye on those charges and suspended his eligibility to run for union office.

1. The "temporary foreman" dispute. Under the agreement, a bargaining unit employee could work as a temporary

foreman, a non-unit position, for up to 90 days. Frye, on behalf of the Local, interpreted that period as 90 calendar days; the Company, as 90 working days. In early November 1975, Frye told James Sivertson, a bargaining unit employee working as a temporary foreman, that he would soon have to decide whether to retain his bargaining unit status.

In response, on November 26, 1975, Sivertson filed an internal union charge against Frye, which alleged as follows:

> "I, Jim Sivertson, hereby request a hearing under Article XIII of the International Constitution. I charge that the President of Local 3489 coerced, slandered, and willful (sic) wronged me both verbally and in transcript."

2. The "preferential seniority" dispute. The preferential seniority clause of the agreement provided that the union could designate up to "five Union officers and grievance committeemen, if employed" for "preferential seniority notwithstanding their positions on the seniority roster." On December 6, 1975, Morey Swanders, a Local member, filed an internal union charge against Frye protesting his designation of Don King, who held the office of trustee, for such preferential seniority, stating:

> "I hereby file charges under Article XIII of our International Constitution against Bernard Frye, President, Larry Lynch, Financial Secretary, Darrell Pine, Treasurer, Pete Debney, Trustee, Don King, Trustee, Local #3489 for wilfully wronging a union brother, (Article XII). On Dec. 4, 1975, these five officers violated my seniority rights by retaining Don King from lay-off by preferential seniority. I feel I should be reimbursed for all my lost monies and be returned to work."

In early 1976, the Local Union acquitted Frye on both charges. Both Swanders and Sivertson then appealed to the International Executive Board (IEB), whose members Frye had politically opposed.

The IEB delegated the case to an Appeal Panel, which, in turn, appointed a Commission to investigate it. The Commission's members were respondents Harry Mayfield, Robert Johns, and Joseph Coyle. The Commission heard evidence on the Swanders charge on November 16, 1976, and on the Sivertson charges on December 15, 1976.[1]

The fourteen paragraphs, or sections, of Article XII of the International Constitution set forth the grounds for disciplining union members. On February 11, 1976, the International Executive Board ordered that all charges against members in the United States based on Article XII, sections 1(e) and (g) be dismissed because such charges might violate Title I of the Labor Management Reporting and Disclosure Act of 1959 (LMRDA). Article XII, section 1(g) provides that "Any member may be penalized for committing any one or more of the following offenses . . . (g) slandering or wilfully wronging a member of the International Union."

At the initial Commission hearing, Frye protested that both charges were vague and barred by the International's February resolution. As a result of his protest, Sivertson amended his charge on November 18, 1976. He continued to allege that Frye had slandered and wilfully wronged him.

In April 1977, the Commission recommended that both appeals be upheld and that Frye be suspended from holding Union office for three years.

On the Sivertson charges, the Commission found that:

> "Bernard Frye acted improperly toward James Sivertson by attempting to intimidate and coerce him into accepting his interpretation of the Temporary Foreman Agreement. His purpose was to deliberately injure the

[1] The Commission also heard evidence on a third charge filed in July of 1976 by Robert Mix. Although the Commission found Frye guilty on the Mix charges, it recommended discipline simply on the basis of the Sivertson and Swanders charge.

appellant and clearly violates Article XII, section 1(m) and (n) of the International Constitution."

Sections 1(m) and (n) of Article XII provide that members may be disciplined for:

"(m) deliberately engaging in conduct in violation of the responsibility of members toward the organization as an institution; and (n) deliberately interfering with the performance of the organization's legal or contractual obligations."

Frye first learned from the Commission's report that he had been accused of violating sections 1(m) and (n). Sivertson's charge provided Frye no notice of sections 1(m) and (n), because it simply paraphrased the proscribed section 1(g).

On the Sanders charge, although the Commission found that Frye "acted in an arbitrary and capricious manner and deliberately misused the rights of the Local Union under the preferential seniority clause," it did not state what union rule or policy Frye violated.

The Appeal Panel adopted the Commission's recommendations, and the International Convention affirmed the Panel's decision.

On November 20, 1978, the National Labor Relations Board affirmed the findings of an Administrative Law Judge, dismissing an unfair labor practice charge which Frye had filed against the International alleging that it violated section 8(b)(1)(A) of the LMRA, 29 U.S.C. 158(b)(1)(A), by suspending his eligibility for office.

Frye then filed this action, in which he alleged that the union had disciplined him without providing him with written specific charges or a full and fair hearing as required by LMRDA section 101(a)(5) and in reprisal for his exercise of rights guaranteed under Title I of the LMRDA. On cross-motions for summary judgment, the District Court for the Southern District of Indiana, the Honorable Gene R. Brooks, granted defendants' motion. On the specificity of the

charges, the District Court held that "there is no evidence that Frye was substantially prejudiced as a result of any deficiency in the written charges. In fact, it is quite apparent that Frye knew the nature of the charges against him and was able to advance a defense against those charges."

Following Frye's timely appeal, the Seventh Circuit Court of Appeals on July 11, 1985, affirmed the District Court and held that "reference to a specific provision of the union's constitution or by-laws is not required to meet the specificity requirement of section 101(a)(5) . . .".

On August 15, 1985, the Seventh Circuit Court of Appeals denied Frye's timely petition for rehearing.

REASONS FOR GRANTING WRIT

1. This case presents an important question of federal law under the Labor Management Reporting and Disclosure Act, namely, whether unions may discipline their members without ever advising them what union rule or policy they allegedly violated. The Circuit Court's decision upholding such discipline violates the plain meaning of the statute which requires that members be served with "written specific charges," licenses unions to impose discipline arbitrarily, and deprives accused members of any adequate opportunity to defend themselves against vague, standardless charges.

Congress enacted LMRDA § 101(a)(5)(A) to stop autocratic union leaders from silencing their internal union opponents through unfair union disciplinary proceedings. To protect against such abuses, Congress imposed the essential norms of due process upon such proceedings, *International Brotherhood of Boilermakers* v. *Hardeman*, 401 U.S. 233, 244 (1971), and expressly mandated that accused members must be served with "written specific charges" before unions may discipline them. 29 U.S.C. § 411(a)(5)(A).

That section ensures that charges will be specific enough to "inform the accused member of the offense that he has allegedly committed." *Id.* at 245. The written charge serves as a guarantee that accused members receive adequate notice of the "offense" so as to be able to prepare some defense. The plain language of the statute eliminates any need for reviewing courts to speculate, on an ad hoc basis, as to accused members' understanding of the basis of the charges. *Strom* v. *Association of Basketball Referees*, 564 F.Supp. 250, 255 (ED PA 1983), aff'd without opinion, 732 F.2d 147 (CA 3 1984). Congress, in plain terms, provided that the written charges must independently demonstrate the fairness of the proceedings. For that reason, reviewing courts may not uphold discipline based upon inadequate, unspecific charges even when the courts might conclude that members fully understood the offense they were accused of committing. The written charges are objective benchmarks to guide that judicial intrusion into internal union disciplinary proceedings which Congress recognized as necessary to promote the federal policy favoring union democrary.

Despite the plain meaning of the statute and its underlying policy, the Circuit Court held that charges are "specific" even when they do not inform accused members of the union rule or policy they allegedly violated. All the Circuit Court requires is that unions advise accused members of the factual basis for the charge. Under this standard, unions may discipline members based on any set of facts alleged in a charge, because each specific factual setting constitutes a separate "offense," and because unions have no duty to notify members of the standards or rules by which they will judge their conduct.

The Circuit Court's departure from the text of the statute will generate a host of abuses, as illustrated by the union's treatment of Frye. The union convicted him upon charges which, in terms, directly paraphrased section 1(g) of Article XII. Because the International proscribed discipline on that basis, the union construed the Sivertson charge as alleging

violations of two totally different union rules, sections 1(m) and (n), although it had never previously brought these rules to Frye's attention.

The union also convicted Frye on the Swanders charge without ever stating any union rule which he violated. In sum, under the Circuit Court's holding, unions may charge members with one offense and convict them of another unmentioned offense, or convict them without providing any advance notice of previously unknown, undefined offenses.

The Circuit Court's holding is novel. It had been axiomatic that due process requires that charges describe the conduct and the union rule which the conduct allegedly violated. See, e.g., *Halsell* v. *Local Union No. 5 Bricklayers*, 530 F.Supp. 830 (ND Tex.) aff'd without opinion 706 F.2d 313 (CA 5 1982); *Perry* v. *Milk Drivers and Dairy Employees Union, Local 302, International Brotherhood of Teamsters*, 656 F.2d 536, (CA 9 1981).

The Circuit Court sanctioned such standardless charges because it rejected Congress's policy, expressed in the plain language of the statute, that the written charges themselves must contain all information necessary for an accused to prepare his defense. Instead, the Circuit Court placed on the accused the burden of demonstrating prejudice from unspecific charges before it would find the statute violated. The Circuit Court substituted for Congress's objective test, based on the charges themselves, a general inquiry into the fairness of the proceedings, grounded in the Court's speculations about the accused member's understanding of the charges.

The court confidently determined from its reading of the charges that the accused should have understood sections 1(m) and (n) of Article XII to apply to his alleged misconduct. What was self-evident to the Circuit Court, however, completely evaded the union tribunal itself, which was unable ever to state what union rules Frye violated in the Swanders case.

In the text of the statute, Congress made a clear choice that fairness meant "written specific charges," not reviewing courts' speculative second guessing of an accused member's urgent plea that he was defenseless against an opaque, standardless charge and open to the wrath of the very union officials whom he had politically opposed.

This Court should grant this Petition for Certiorari to ensure that the plain meaning of the statute is enforced and that union members receive the protections which Congress intended. *American Federation of Musicians* v. *Wittstein*, 379 U.S. 171, 175 (1964).

2. The Circuit Court misread and misapplied the Supreme Court's decision in *International Brotherhood of Boilermakers* v. *Hardeman*, 401 U.S. 233 (1971).

Although the Circuit Court cited *Hardeman*, *supra*, as authority for its novel holding, in *Hardeman* the specificity of the charges was conceded and the Court did not address the issue presented by this petition.

Because the Court there did approvingly note that the charges included express references to the union rule which the accused member had allegedly violated, lower courts have read *Hardeman* to require charges to state both the accused member's misconduct and the union rule which that misconduct violated. *Halsell*, *supra*. Nothing in *Hardeman* suggests that unions are excused from the duty imposed on them by the plain language of the statute to inform accused members of the offenses which they allegedly committed.

This Petition for Certiorari should be granted to clarify this Court's ruling in *Hardeman, supra*, and to restore basic due process to union disciplinary proceedings.

CONCLUSION

This Petition for Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

In the

United States Court of Appeals

For the Seventh Circuit

No. 84-1772

BERNARD FRYE,

Plaintiff-Appellant,

v.

UNITED STEELWORKERS OF AMERICA, HARRY MAYFIELD, ROBERT JOHNS, JOSEPH COYLE, WILLIAM MOLLER, and LOCAL UNION 3489,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Indiana, Terre Haute Division.
No. 79-C-58—Gene E. Brooks, *Judge.*

ARGUED FEBRUARY 27, 1985—DECIDED JULY 11, 1985

Before ESCHBACH and FLAUM, *Circuit Judges*, and DOYLE, *Senior District Judge.**

FLAUM, *Circuit Judge.* Plaintiff Bernard Frye brought suit under the Labor-Management Reporting and Disclosure Act (LMRDA) against the International Union of the United Steelworkers of America (USWA) and Local Union 3489, as well as officials of both bodies, alleging that discipline imposed on him for incidents that occurred while Frye was president of the local union had been imposed in violation of sections 101(a)(2), 101(a)(5), and 609 of the LMRDA, 29 U.S.C. §§ 441(a)(2),

* The Honorable James E. Doyle, Senior District Judge for the Western District of Wisconsin, is sitting by designation.

441(a)(5), & 529 (1982). The district court granted summary judgment for the defendants. For the reasons set out below, we affirm.

I.

Frye was elected to a three-year term as president of Local 3489, USWA, in 1973.[1] During 1975, internal union charges were filed against Frye and others by James Stivertson and Morey Swanders, members of the Local.[2] Early in 1976, the Local's Trial Committee heard the charges separately and ruled, in both cases, that Frye was not guilty. The Local's membership accepted the Trial Committee's report; Stivertson and Swanders then appealed to the International's Executive Board. Several months later, in April 1976, Frye lost a bid for reelection as president of the Local. For reasons not disclosed in the record, the International put Local 3489 into an administratorship from July to December 1976. During this administratorship, another member of the Local, Robert Mix, who was the recording secretary during Frye's presi-

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[1] During the years of his presidency, Frye was involved in litigation with both the Local and International unions over events surrounding an earlier, unsuccessful attempt to become president. That separate action was commenced in 1970 and was decided by this court in *Brennan v. Local 3489, United Steelworkers of America*, 520 F.2d 516 (7th Cir. 1975), *aff'd sub nom Local 3489, United Steelworkers of America v. Usery*, 429 U.S. 305 (1977). Those decisions held that a provision of the International's constitution that required a member to have attended at least one-half of the meetings of his local in order to run for union office was unreasonable and violated section 401(e) of the LMRDA, 29 U.S.C. § 481(e) (1982).

[2] The Stivertson charge related to Frye's handling of a collective bargaining agreement provision limiting the time an employee could hold the position of temporary foreman. Frye construed the provision in a way that would force Stivertson to give up that post earlier than he would have to according to the employer's construction of the provision. The Swanders charge concerned Frye's alleged violation of Swanders's seniority rights by illegally giving preferential seniority to another individual. The details of these charges are fully set out in the NLRB decision. *United Steelworkers of America* (Frye), 239 NLRB 374 (1978).

dency, filed certain "requests" with the International; these documents contained additional charges against Frye.[3]

Under procedures established by the International, the Stivertson and Swanders appeals were delegated to the Appeal Panel, a subcommittee of the Executive Board that designated a Commission to investigate the appeals. When the International received the Mix charges, those charges were referred to the same Commission. After some delay caused by postponed hearing dates and a change in the membership of the Commission, hearings were held on November 16, 1976 (Swanders appeal) and December 15, 1976 (Stivertson appeal and Mix charges); neither of these proceedings was transcribed into a written record.

The Commission issued separate opinions on each of the matters in April 1977. In these opinions, the Commission recommended that Frye be found guilty on both the Stivertson and Swanders complaints and on two of the Mix charges. As punishment, the Commission recommended that Frye be suspended from holding local union office for three years; other defendants were to be reprimanded. The Commission noted that the recommended discipline was based only on the Stivertson and Swanders charges. The Appeal Panel, acting for the Executive Board, adopted these recommendations and held, in addition, that the two Mix charges could also provide grounds for Frye's discipline; the penalty, however, was not changed. Frye appealed the Board's decision to the International Convention, and the Convention affirmed the decision on September 22, 1978.

Immediately after the Commission issued its report, Frye filed an unfair labor practice charge with the Na-

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[3] The Mix charges consisted of various allegations that Frye and others had claimed payments for time spent on union business when, in fact, they had been on personal business. These charges are also discussed in greater detail in the NLRB decision.

tional Labor Relations Board (NLRB). The charge filed with the NLRB alleged that the International had violated section 8(b)(1)(A) of the National Labor Relations Act (LMRA), 29 U.S.C. § 158(b)(1)(A) (1982), by imposing the discipline described above. The General Counsel issued a complaint, and there was a hearing before an administrative law judge (ALJ). The ALJ dismissed the complaint, finding that there was "more than ample evidence" to support the findings and recommendations of the Commission and that the Commission had had "reasonable" grounds for imposing the penalty. The ALJ's decision was then affirmed by the NLRB, *United Steelworkers of America* (*Frye*), 239 N.L.R.B. 374 (1978). Frye did not appeal the NLRB decision.

In the civil action now on appeal to this court, both parties filed motions for summary judgment in the district court. As set out by the district judge, the three issues raised were the following:

1. Whether Frye was disciplined for exercising rights of free speech and assembly, in violation of sections 101(a)(2) and 609 of the LMRDA.
2. Whether Frye was disciplined without being served with written specific charges, in violation of section 101(a)(5) of the LMRDA.
3. Whether Frye was disciplined without being afforded a full and fair hearing, in violation of section 101(a)(5) of the LMRDA.

Summary judgment was granted for the defendants on all issues. On appeal, Frye challenges all aspects of the district court's decision.

II.

With respect to the claims based on sections 101(a)(2) and 609, dealing with a union member's rights to freedom of speech and assembly, the district court held that in the NLRB action, based on the same issues in connection with

the LMRA unfair labor practice charge, the parties had fully and fairly litigated the same facts and circumstances and that the findings of fact of the NLRB should be given preclusive *res judicata* or collateral estoppel effect, citing *United States v. Utah Construction Co.*, 384 U.S. 394, 422 (1966). In *United States v. Utah Construction Co.*, the Supreme Court made the following statement:

> When an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to apply res judicata to enforce repose.

384 U.S. at 422.

This court has stated that administrative agency decisions may be made binding by the doctrines of collateral estoppel or *res judicata* when it is appropriate to do so in light of the underlying principles set forth in 1 *Restatement (Second) of Judgments* §§ 27 & 28 (1982).[4] *Porter & Dietsch, Inc. v. Federal Trade Commission*, 605 F.2d 294, 300 (7th Cir. 1979), *cert. denied*, 445 U.S. 950 (1980); *Bowen v. United States*, 570 F.2d 1311, 1320-22 (7th Cir. 1978). In *Lightsey v. Harding, Dahm & Co., Inc.*, 623 F.2d 1219 (7th Cir. 1980), *cert. denied*, 449 U.S. 1077 (1981), we reviewed the requirements that must be met for an agency decision to be given collateral estoppel effect. First, the original action must have been properly before the agency. If so, "the court must find that the same disputed issues of fact were before [the administrative agency] as are before the court, that the agency acted in a

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[4] Section 27 of 1 *Restatement (Second) of Judgments* (1982) sets out the general rule of issue preclusion:

> When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.

Section 28 lists five recognized exceptions to this general rule.

judicial capacity, and that the parties had an adequate opportunity to litigate the issues before the agency." *Id.* at 1221.

In the present case, it is conceded that Frye's case was properly before the NLRB and that the agency acted in a judicial capacity. There is also no dispute about the opportunity the parties had to litigate the issues. Instead, Frye disputes the propriety of applying collateral estoppel on three bases: 1) that the NLRB decision was based on the LMRA rather than the LMRDA; 2) that the LMRDA issue is outside the NLRB's area of traditional expertise; and 3) that the findings of the NLRB do not specifically address all the allegations in the present LMRDA charge.

Frye's first two arguments, based on the policy differences between the LMRDA and the LMRA, overlook an important aspect of collateral estoppel. Collateral estoppel is allowed to prevent the relitigation of any legal or factual issue that has been "actually litigated and determined by a valid and final judgment." 1 *Restatement (Second) of Judgments* § 27 (1982), quoted in *Grip-Pak, Inc. v. Illinois Tool Works, Inc.*, 694 F.2d 466, 469 (7th Cir. 1982), *cert. denied*, 461 U.S. 958 (1983). An express finding of fact or finding of law in the earlier judgment is sufficient to give it preclusive effect, *id.*, if that finding was necessary and essential in the earlier judgment. *See Wickham Contracting Co., Inc. v. Board of Education*, 715 F.2d 21, 28 (2d Cir. 1983) (collateral estoppel improper because the relevant factual finding had not been critical and essential in the earlier action and therefore the parties' incentive to litigate that fact would have been different); *Nasem v. Brown*, 595 F.2d 801, 804 (D.C. Cir. 1979) (collateral estoppel could attach to a finding that *had* to be reached but not where a judgment could be based upon one of several alternative grounds and did not expressly state which one). Therefore, it is not the similarity between the types of litigation or actions involved but between the factual issues and their roles in the respective actions that is important.

At the heart of both the NLRB action and the first issue of the case before us is Frye's contention that the

union's institution of charges against him and its application of discipline were motivated by a desire to retaliate against him for earlier actions that union leaders may have felt had adverse effects on the union.[5] As the district court noted and Frye concedes on appeal, the protection from restraint or coercion by a labor organization given to union members under section 8(b)(1)(A) of the LMRA has been recognized as extending to their rights under the LMRDA. *Carpenters Local Union No. 22*, 195 N.L.R.B. 1 (1972). Therefore, the identity of issues, and incentives to litigate the factual findings on which the issues would be resolved, is total in this case.

Frye argues, however, that the NLRB does not decide LMRDA claims in the same fashion as the federal courts decide them. Specifically, he asserts that although the NLRB does rule on LMRDA claims, it is more restrictive in its review and uses a different standard to determine if there has been a violation of protected rights. In making this assertion, Frye acknowledges that he is asking this court to refute the holding of *Nix v. Fulton Lodge No. 2, I.A.M.*, 452 F.2d 794 (5th Cir.), *cert. denied*, 406 U.S. 946 (1972). In *Nix*, the plaintiff had alleged that the union's wrongful discipline had resulted in his discharge from employment and expulsion from union membership, in violation of section 101(a)(2) of the LMRDA. In an earlier unfair labor practice charge, based on LMRA sections 8(a)(1) and 8(a)(3), the NLRB had found that his discharge was due to misconduct on the job, not his union membership or activity. The Fifth Circuit held that the earlier NLRB decision had preclusive effect and dis-

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[5] In the decision adopted by the NLRB, the ALJ described these protected activities as including "running for union office and supporting various candidates in their campaigns for union office in opposition to incumbent union officials, performing the duties and responsibilities of an officer of the Local by warning other union members of their potential loss of employment status under the contract, [and] pursuing procedures under the [LMRDA] to challenge certain of Respondent's conduct and constitutional provisions." *See supra* footnote 1.

missed the later suit. *Nix* has been cited by a number of other circuits as standing for the proposition that issue preclusion in this situation is appropriate.

It is true that actions based on one statute should not automatically be given preclusive effect in actions based on another statute. *Tipler v. E.I. duPont deNemours & Co.*, 443 F.2d 125, 128 (6th Cir. 1971). And it is also true that considerations of fairness can make application of collateral estoppel inappropriate for a number of reasons. *Parklane Hoisery Co. v. Shane*, 439 U.S. 322, 332 (1979). However, when all factors required for collateral estoppel are present, it is the party opposing preclusion who must demonstrate that applying collateral estoppel in a specific case would result in particularized unfairness, *see Wickham*, 715 F.2d at 26. It is not enough to argue, however persuasively, that there are theoretical differences that could potentially lead to unfairness and make collateral estoppel inappropriate. We are not required to determine if there might be situations in which differences in the way LMRDA and LMRA determinations are made that could, in some situations, lead to a result different than that in *Nix*. We need only determine if the analysis actually applied in this NLRB proceeding was so unlike the analysis that would have been applied by a district court that application of collateral estoppel would be inappropriate in this case. *See generally* 1 *Restatement (Second) of Judgments* § 28(2) & (3) (1982).

Reviewing the thorough decision of the ALJ and the record on which it is based, we conclude that none of the potential sources of unfairness hypothesized by Frye make reliance on the NLRB decision unfair in this case.[6] The allegations made by the General Counsel in the LMRA

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[6] The differences cited by Frye stem from distinctions between the LMRDA and other national labor legislation that were noted by the Supreme Court in *Hardeman*, 401 U.S. 233, 237-40 (1971), which held that the NLRB does not have exclusive jurisdiction over Title I of the LMRDA. Frye argues that the NLRB, unlike federal courts, considers claims based on LMRDA

(Footnote continued on following page)

action were the same as those made by Frye in his LMRDA action. The ALJ did in fact review all claims of procedural error raised in the LMRA claim, as well as claims based on the merit (or the alleged lack thereof) of the charges and on the disproportionate penalty imposed on Frye. The ALJ sought to determine "whether Frye was suspended . . . because of his protected concerted activities under the Act." While the ALJ found that the evidence showed "hostility and animus" between Frye and certain of the union's representatives, he also determined that the procedural claims were disproved by credited testimony, that there was "more than ample evidence to support" the charges brought against Frye, and that the harsher penalty imposed on Frye, as the leader of the others charged, was reasonable and consistent with the evidence. Although only one specific finding was quoted by the district court, placing undue emphasis on the penalty aspect, the full opinion of the ALJ demonstrates that the central issue of motivation and the central claim of discriminatory or retaliatory treatment were thoroughly addressed. We perceive no differences between the decision actually made by the ALJ and a decision that would be rendered by a district court in deciding a suit based on Title I of the LMRDA. *See Lamb v. Miller*, 660 F.2d 792, 794 (D.C. Cir. 1981) (outlining appropriate district court analysis of LMRDA claims).

Frye's third argument, that the LMRDA allegations contain some matters not brought to the attention of the ALJ, is without merit. We do not agree with his assertion that there is a meaningful difference between the allega-

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[6] *continued*

rights only in the context of the general policy of all labor laws, citing to *Schofield v. NLRB*, 394 U.S. 423, 430 (1969) and *Central Florida Sheet Metal v. NLRB*, 664 F.2d 489, 494 (5th Cir. 1981). This approach, he contends, results in the NLRB's applying more stringent criteria for recognizing a Title I violation than would be applied by the courts and giving limited attention to other factors (such as procedural irregularities) considered by the courts in determining if there has been a violation.

tions. Even if there were other facts that could have been presented at the NLRB hearing, the fact that they were not brought to the ALJ's attention would not argue against application of collateral estoppel, as long as there had been an equal incentive to litigate the issue and if there were no other factors making estoppel unjust.

In summary, therefore, we reject all arguments presented in this appeal with respect to the application of collateral estoppel. The issues underlying Frye's allegation that the union violated his rights under Title I of the LMRDA were fully and fairly litigated in the earlier NLRB proceeding, and judgment on those issues was reached in a manner that did not differ to the extent that it would have affected the final decision.

III.

Frye's second claim is that both Stivertson's and Swanders's charges did not meet the specificity requirements of section 101(a)(5) of the LMRDA, 29 U.S.C. § 411(a)(5)(A) ("No member . . . may be fined, suspended, expelled, or otherwise disciplined . . . unless such member has been (A) served with written specific charges. . . ."). The written charges should contain "a detailed statement of the facts relating to the [incident] that formed the basis for the disciplinary action." *Curtis v. International Alliance of Theatrical Stage Employees*, 687 F.2d 1024, 1027 (7th Cir. 1982) (quoting *International Brotherhood of Boilermakers v. Hardeman*, 401 U.S. 233, 245 (1971)). Frye does not contend that he was in any doubt about the factual basis of either charge; the references in the written charges notified him of situations with which he was fully familiar. Swanders's complaint accused Frye and other officers of "violat[ing] my seniority rights by retaining Don King from lay-off by preferential seniority," and Stivertson's charge, as it was amended one month prior to the hearing, referred in detail to an incident in which Frye had informed him that his time as temporary foreman would expire in two days.

The wrongful conduct alleged by Swanders is clear, and Frye was very familiar with Stivertson's reasons for objecting to the time limit Frye imposed on his temporary post. Frye objects to the specificity of the charges only because they did not state what rule or policy he violated. Swanders's charge referred to Article XII of the International's constitution, a provision listing many different offenses, and although Stivertson's amended charge contained no specific reference, his initial version had referred to Article XII.

Reference to a specific provision of the union's constitution or by-laws is not required to meet the specificity requirement of section 101(a)(5) for, as the Supreme Court noted in *Hardeman*, " a union may discipline its members for offenses not proscribed by written rules at all. . . ." 401 U.S. at 244-45. It is obviously more desirable for the factual basis of the charge to be specifically tied to the union law that it allegedly violates. *See Curtis*, 687 F.2d at 1027. However, to establish a violation of 101(a)(5)(A), a disciplined member must demonstrate that he was misled or otherwise prejudiced in the presentation of his defense. *Hardeman*, 401 U.S. at 245.

In the case before us, there could have been no doubt about which provisions of the union's constitution were involved. With respect to both of the charges, Frye had been directed to Article XII. Of the fourteen subsections comprising that article, there are only two that could possibly have applied to the factual allegations in the charges. A third possibility, subsection (g), was known to be invalid well before the hearing. Subsection (m) describes as an offense "deliberately engaging in conduct in violation of the responsibility of members toward the organization as an institution." Subsection (n) concerns "deliberately interfering with the performance of the organization's legal or contractual obligations." A brief reading of the article would immediately call attention to these grounds, and, although the general wording of the subsections provides little in the way of direction, failure to list these in the charges did not deprive Frye of an

opportunity to prepare his defense. Section 101(a)(5)(A) does not authorize the courts to determine the scope of offenses for which a union may discipline its members. *Id.* at 244. While we neither condone the failure to list the specific provisions nor approve of the vague language of the subsections involved, we affirm the district court's ruling that the claim of inadequate written charges is without merit.

IV.

Frye's final claim is that he was not afforded a "full and fair hearing" as required by section 101(a)(5)(C). He cites the following alleged inadequacies: 1) a new evidentiary hearing at the appellate level of the union hearing process was imposition of double jeopardy; 2) consideration of the Mix charges was improper and unfairly prejudiced the hearing panel; 3) the Commission took *ex parte* evidence and showed bias; and 4) punishment was imposed "without a principled basis" (a reference to the allegedly inadequate written charges).

In *Hardeman*, the Supreme Court made the following statement about the section's guarantee of a "full and fair" disciplinary hearing:

> [T]his guarantee requires the charging party to provide some evidence at the disciplinary hearing to support the charges made. This is the proper standard of judicial review. We have repeatedly held that conviction on charges unsupported by any evidence is a denial of due process.

401 U.S. at 246 (footnote omitted). The Court went on to state that a stricter standard "would be inconsistent with the apparent congressional intent to allow unions to govern their own affairs." *Id.*

In a review of union disciplinary procedures, this court stated:

> While the union member need not necessarily be provided with the full panoply of procedural

> safeguards found in criminal proceedings, the fundamental and traditional concepts of due process do apply to the union disciplinary hearing. An essential element of a full and fair hearing is an impartial tribunal which arrives at a decision on the basis of evidence which the accused has an opportunity to confront and rebut.

Tincher v. Piasecki, 520 F.2d 851, 854 (7th Cir. 1975) (citations omitted). In *Tincher*, we held that section 101(a)(5)(C) had been violated where one of the hearing committee's members had been charged by the accused in a collateral proceeding and where the hearing committee considered a prior invalid decision against the union member in reaching its decision. The Ninth Circuit later reviewed a number of cases dealing with the requirements of section 101(a)(5)(C) and concluded that the underlying concern is that "a union member not be found guilty based on evidence not presented at the disciplinary hearing." *Myers v. Affiliated Property Craftsmen Local No. 44*, 667 F.2d 817, 820 (9th Cir. 1982). Thus, a prejudgment of guilt by the hearing tribunal or a hearing at which no substantive evidence to support the charges is presented can violate the statute. *Id.* However, section 101(a)(5)(C) does not require that union disciplinary hearings incorporate the specific protections associated with judicial proceedings, including the right to be represented by counsel and the technical rules of pleading, procedure, and evidence. *Curtis v. International Alliance of Theatrical Stage Employees*, 687 F.2d at 1029.

Frye does not cite any authority for his assertion that the errors he notes here rise to the level required for a violation of section 101(a)(5)(C). We agree with the district court that Frye's contention in this respect is without basis; none of the claimed irregularities or the combination of all of them offend the traditional concepts of due process. Two of the allegations may be dismissed without further discussion. The claimed inadequacy of the written charges has been discussed above; we have determined that Frye was not misled or prejudiced by any of

those claimed defects. His contention that a trial *de novo* by the International's Commission was improper as a matter of law is not supported by reason or authority. When, as here, there are allegations that decisions made at the local level have been biased or improperly handled, a trial *de novo* may be the preferred and appropriate procedure. *See Perry v. Milk Drivers' and Dairy Employees' Union*, 656 F.2d 536, 539 (9th Cir. 1981).

With respect to the Commission's consideration of the Mix charges, the record and Frye's own presentation of facts refute his claim that he was not given notice of these charges. In addition, it was not improper, on its face, for the Commission to receive evidence of these allegations concerning Frye's conduct as president along with evidence directly in support of the Stivertson and Swanders charges. It must be remembered that the central issue raised in those charges was Frye's alleged abuse of his power as president, and the central thrust of Frye's defense was that he was being unfairly attacked by others within the union. The Mix charges, therefore, had some relevance to the issue under consideration and, if they had been found to be totally unsupported, could have provided important evidence in support of Frye's contentions.

In a deposition, one of the members of the Commission stated that the Commission agreed to hear the Mix charges, when asked to do so by the International, because the parties were already present and could clear up the matter: "[W]e told Mix and everybody present what our view was, that it wasn't specific and didn't get under the right section. But since they were there, we were going to hear both sides of the story. Then that was as far as we were going to go with it. If anybody had had any objection, get specific, and go through the other channels or procedure, but he said go ahead, so we did." The Commission member also testified that it was not unusual for a Commission to investigate concerns that had not been presented to a local trial committee first.

No punishment was imposed on Frye in connection with these charges. Even if the matters involved in the

Mix charges had some effect on the judgment of the Commission members, Frye had been given adequate notice of the charges and had an opportunity to confront and rebut the accusations that they contained. The fact that the Commission did not find support for all of the Mix charges demonstrates that he took advantage of this opportunity. In these circumstances, we cannot view inclusion of the Mix charges in the matters considered by the Commission to have been a violation of section 101(a)(5)(C).

Frye's claim that the Commission was biased against him stems from what he terms the "ample evidence of hostility" toward him by members of the International. His history of opposition to union leadership was recognized by the ALJ in the unfair labor practice hearing. While a history of conflict and animosity between a member of a union and its governing body may set the stage for harsh or improper treatment of that member, charges that bias undermined the fairness of a disciplinary proceeding must be supported by specific factual allegations from which the operation of bias can be inferred. None of Frye's allegations meet this test.

The members of the Commission had not been involved in any of Frye's past disputes with the union hierarchy. Their actions in allowing one of the complaints (Stivertson's) to be amended at the appeals stage was reasonable in view of an intervening change in the interpretation of the union's constitution and the absence of any uncertainty about the facts on which the complaint was based. And the *ex parte* communication referred to by Frye was a letter sent to the Commission by William Noller, the International Staff Representative assigned to Local 3489. Noller later testified at the hearing, and Frye does not contend that he was deprived of the full opportunity to question him about any of his allegations or to rebut his statements. While Noller's act in sending a derogatory letter to the Commission may demonstrate his animus toward Frye, receipt of the letter does not neces-

sarily implicate the impartiality of the Commission. These allegations are not sufficient to imply that the Commission was improperly biased against Frye.

V.

In summary, we hold that Frye's claim that he was disciplined for exercising his rights of free speech was adequately and authoritatively determined by the NLRB proceeding, that the written charges on which he was tried were not impermissibly unclear, and that he was afforded a full and fair hearing guaranteed by section 101(a)(5)(C) of the LMRDA. Consequently, the decision of the district court is

AFFIRMED.

A true Copy:
Teste:

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Clerk of the United States Court of Appeals for the Seventh Circuit

APPENDIX B

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

CHICAGO, ILLINOIS 60604

AUGUST 15, 1985

Before: **Hon. JESSE E. ESCHBACH, Circuit Judge**
Hon. JOEL M. FLAUM, Circuit Judge
Hon. JAMES E. DOYLE, Senior District Judge*

BERNARD FRYE,
Plaintiff-Appellant,

No. 84-1772

vs.

UNITED STEELWORKERS OF AMERICA, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

No. 79-C-58

Gene E. Brooks, **Judge.**

ORDER

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above entitled cause by attorneys for plaintiff-appellant Bernard Frye, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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*The Honorable James E. Doyle, Senior District Judge for the Western District of Wisconsin, is sitting by designation.

APPENDIX C

United States District Court

SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION

BERNARD G. FRYE,

Plaintiff,

vs.

UNITED STEELWORKERS OF AMERICA, HARRY MAYFIELD, ROBERT JONES, JOSEPH COYLE, WILLIAM NOLLER, and LOCAL 3489, UNITED STEELWORKERS OF AMERICA,

Defendants.

CAUSE No. TH 79-58-C

MEMORANDUM ORDER

This matter is before the Court on motions for summary judgment filed on behalf of both the plaintiff and the defendants. There being no genuine issues of material fact, the Court now disposes of the case by ruling on the motions. The Court enters its Findings of Fact and Conclusions of Law in memorandum form, pursuant to Rule 52(a), Federal Rules of Civil Procedure.

FACTUAL SUMMARY

The plaintiff, Bernard G. Frye (hereinafter "Frye"), was a member of Local 3489, United Steelworkers of America (hereinafter "the Local") and served as its president for a three-year term commencing in 1973. Disputes arose between Frye, Stran Steel, the company for which he worked (hereinafter "the Company"), and the International Union during 1975 and thereafter. These disputes led to several hearings and appeals within the union, described *infra*, the

resolution of which led to the instant lawsuit. Frye's motion for summary judgment makes three (3) basic allegations:

(1) That he was disciplined for exercising rights of free speech and assembly, a violation of 19 U.S.C. §§ 411(a)(2) and 529.

(2) That he was disciplined without being served with the statutorily required written specific charges, a violation of 29 U.S.C. § 411(a)(5).

(3) That he was disciplined without being afforded a full and fair hearing, a violation of 29 U.S.C. § 411(a)(5).

The defendants contest these contentions and assert the resolution of those issues should result in summary judgment for the defendants.

To analyze the issues presented by these motions, a review of the facts and circumstances leading to this lawsuit is necessary.

While Frye served as the Local President in 1975, a dispute arose between the Company and Frye about contract interpretation. There existed collective bargaining agreement language which permitted an employee to serve as a temporary foreman for only ninety (90) days. Frye's interpretation was that the contract meant ninety (90) calendar days; the Company's interpretation was that the provision meant ninety (90) work days. Frye informed the employee involved, James Sivertson (hereinafter "Sivertson"), that he would have to decide whether to relinquish the foreman duties or resign from the Local. Further, Frye posted a letter in the plant supporting his contract interpretation and his decision regarding Sivertson.

Thereafter, Sivertson filed a charge against Frye alleging he had been "slandered" and "wronged" by Frye's statements. In addition, charges were filed against other union members as a result of these circumstances. In early 1976, a trial committee heard the charges against Frye and the

others. A decision favorable to Frye followed and was accepted by the Local membership the next month. Sivertson appealed the decision to the International Executive Board of the Union.

In the meantime, another Local member, Morey Swanders, had filed a charge against Frye and other union members for "wronging a union brother." The charges stemmed from Frye's decision to grant preferential seniority to Don King, a Trustee in the Local. Swanders charged that such decision violated his seniority rights. Again, a trial committee from the Local heard the charges and ruled in Frye's favor. The decision was subsequently appealed.

The defendants have admitted that both Sivertson and Swanders were given "full and fair hearings" at the Local trial committee level.

Prior to the International Executive Board hearings on the appeals, Frye was defeated for re-election as the Local president in April, 1976. In July, 1976, the International Union placed the Local under administratorship and assumed the affairs of the Local. This administratorship later was dissolved in December, 1976.

An appeal to the International Executive Board is delegated to an Appeal Panel, a sub-committee of the Executive Board. This Panel investigates the charges raised in the appeal. The original appeal on the Sivertson charges was scheduled for hearing in March, 1976, but was postponed because of a conflict in Frye's schedule. Written notice was given Frye for another date—May 4, 1976. That hearing also did not occur. Frye claims none of the commissioners was present that day at the appointed time and place, and further asserts that formal notice of postponement was not issued to him.

In October, 1976, Frye received notice that the appeals raised by Sivertson and Swanders would be heard together by a new appeal commission (hereinafter "the Commission") composed of Harry Mayfield and Robert Johns on November

16th. Frye represented all of the charged parties in that proceeding.

One other issue had been raised in the intervening period. On August 2, Local member Robert Mix wrote a letter to the International Union alleging financial wrongdoing by Frye and other officers. The charge alleged Frye and the others wrongfully claimed payments for time spent on union business when, in fact, they were on personal business. This means of making a charge was apparently appropriate in light of the Local's status under administratorship. Mix asked in his correspondence that his charges be heard together with the appeals of the Sivertson and Swanders decisions. Frye first learned of these latter charges at the November 16th appeals hearing.

The Commission ruled on November 16th that the Mix charges were improperly before them and that while they could only consider those charges as "background," they would hear evidence on those allegations. The Commission included both Mayfield and Johns, but Joseph Coyle also had been added to the Commission hearing the appeals. On the first day of the hearing, the Commission heard evidence on the Swanders charges, something Frye contends was a trial *de novo* on the charges heard and earlier resolved by the Local Trial Committee.

The evidence heard by the Commission with respect to the Swanders charges was that Frye, acting as the Local president, had notified the Company that Don King, Frye's brother-in-law, was entitled to "superseniority" pursuant to provisions of the collective bargaining agreement. This provision provided layoff protection for a certain number of union officers. Swanders asserted that in so doing—i.e., giving King, a Trustee, superseniority in a local that never had granted such a status to a Trustee—Frye had granted King seniority over Swanders, who prior to Frye's decision had greater seniority than King. At the time of the decision, the Local ten-man executive board had split 5-5 over granting King the superseniority status. Frye and King, of course,

had voted with the five persons favoring the move. Frye voted a second time to break the tie, asserting his right to do so as Local president.

The Commission reconvened on December 15th, in part because of Frye's request for an extension of time to prepare his defense to the Mix charges as well as to prepare additional defense to the Sivertson charges based on a statement of particulars submitted November 18th.

The Commission heard evidence indicating that Frye had not been authorized by the Executive Board of the Local's membership with respect to the contract interpretation affecting Sivertson. Frye's decision, in effect, narrowed Sivertson's rights to less than the Company was willing to accept. The Commission further heard evidence with respect to the Mix charges that Frye had claimed and received travel expenses for time spent on union business when he had, in fact, spent the majority of the time on personal business.

The Commission issued its report in April, 1977, and found that Frye had acted improperly with respect to Sivertson and Swanders. The Commission found in part for Frye and in part against him with respect to the Mix charges, but ordered no discipline as a result of those charges. The Commission's recommendation based on their findings in the other hearings was that Frye be denied eligibility for office in the Union for a period of three (3) years. Other persons named in the charges were reprimanded.

The Appeal Panel adopted the Commission's recommendations with the modification that the finding of wrongdoing in the Mix case, although heard only as background by the Commission, also should be grounds for discipline. When the Executive Board adopted the findings of the Appeal Panel, Frye initiated an appeal to the International Convention which adopted the findings of the International Executive Board.

In addition, Frye filed a charge with the National Labor Relations Board. The General Counsel pursued the case before an administrative law judge who made findings adverse to Frye. The decision was adopted by the NLRB and was not appealed by Frye. Further, a complaint with respect to Frye's suspension was made to the Department of Labor, which dismissed the complaint after investigation.

I

IS THE DECISION OF THE NATIONAL LABOR RELATIONS BOARD IN ADOPTING THE FINDINGS OF THE ADMINISTRATIVE LAW JUDGE BINDING ON THIS COURT AS COLLATERAL ESTOPPEL OR RES JUDICATA AND COMPEL GRANTING SUMMARY JUDGMENT IN DEFENDANTS' FAVOR?

Defendants advance the argument at the end of their brief in support of summary judgment that the findings of the administrative law judge as specifically adopted by the NLRB should dispose of the case. In essence, they contend that Frye here is attempting to relitigage issues decided by the administrative agency and that such findings are binding on this court under the theories of collateral estoppel and res judicata. There is support in case law for the binding effect of such administrative agency decision on federal courts. See, *United States* v. *Utah Construction Co.*, 384 U.S. 394, 422 (1966). The Seventh Circuit has recognized this principle of law in cases involving the National Transportation Safety Board, *Bowen* v. *United States*, 570 F.2d 1311 (1978), and reaffirmed its position in *Porter & Dietsch, Inc.* v. *F.T.C.*, 605 F.2d 294, 300 (1979). While no specific Seventh Circuit authority for attributing such weight to the determinations of the National Labor Relations Board is apparent, other circuits have chosen to do so following the *Utah Construction* holding. See, *Painters District Council No. 38* v. *Edgewood Contracting Co.*, 416 F.2d 1081 (5th Cir. 1969); *Paramount Transport Systems* v. *Chauffeurs, etc., Local 150*, 436 F.2d 1064 (9th Cir. 1971); *International Wire* v. *Local 38*,

International Brotherhood of Electrical Workers, 475 F.2d 1078 (6th Cir. 1973); *Consolidated Express, Inc.* v. *N.Y. Shipping Ass'n.*, 602 F.2d 494 (3rd Cir. 1979).

Frye does not dispute this case authority but contends, instead, that the issues he seeks to litigate in the instant lawsuit were not considered by the administrative law judge and adopted by the NLRB. Defendants assert that while denominated under different statutes, the contentions raised here are essentially the same as those resolved in the earlier administrative hearings.

The Court finds that the defendants' contention is applicable only to the first issue raised in plaintiff's motion for summary judgment, *i.e.*, that Frye was unfairly or disparately disciplined for exercising protected rights of free speech and assembly. The Court has reviewed the findings of the administrative law judge in their entirety and believes these contentions were fully and fairly litigated in that proceeding. In that proceeding, the General Counsel asserted that Frye's suspension from candidacy for office within the Local was discriminatorily motivated, that the charges against him had no merit, and that the penalty imposed was disparate as compared to other persons charged for similar offenses. The findings of fact review the very same circumstances reviewed in this memorandum, *supra*, and this Court places credence in the findings by the administrative law judge and adopted by the NLRB. The Court specifically relies upon the finding stated at p. 18 of the administrative law judges Findings of Fact:

> While the penalty imposed upon Frye appears harsh when compared to the reprimands given to the other accused, Chairman Mayfield's explanation that it was based upon the feelings of the members of the International Commission that Frye was running a one-man local and the other accused were only following his lead appears both reasonable and consistent with the evidence and does not establish disparate treatment toward Frye. (footnote omitted).

Thus, as to the first issue raised in the plaintiff's motion for summary judgment, the Court finds for the defendants and against the plaintiff as to that issue.

II

WAS FRYE DISCIPLINED WITHOUT BEING SERVED WITH STATUTORILY REQUIRED WRITTEN SPECIFIC CHARGES IN VIOLATION OF 29 U.S.C. § 411(a)(5)?

Frye contends the written charges presented by both Sivertson and Swander did not adequately advise him of the allegations against him. Written charges in proceedings of this kind are required. *Boilermakers* v. *Hardeman*, 401 U.S. 233 (1971). These written charges need not allege with the specificity of a criminal indictment the nature of the charges. *Curtis* v. *International Alliance of Theatrical Stage Employees*, 687 F.2d 1024 (7th Cir. 1982); *Tincher* v. *Piasecki*, 520 F.2d 851 (7th Cir. 1975). The complaint should contain a "detailed statement of the facts relating to the (incident) that formed the basis for the disciplinary action." *Hardeman, supra*, 401 U.S. at 245.

Frye contends in his brief that the Swanders charges "adequately addressed the acts complained of." It is further apparent that the provision of particular charges in the Sivertson case, although it came during the appeals process before the International's Commission, also met the requirement of written charges. Frye contends the amendment does not cure the deficiency of the charges, and that the charges failed to specifically note which union constitution violations were alleged against him.

On review of the record before the Court, there is no evidence that Frye was substantially prejudiced as a result of any deficiency in the written charges. In fact, it is quite apparent that Frye knew the nature of the charges against him and was able to advance a defense against those charges. While the initial written charge made by Sivertson was arguably vague, the Court finds the amended charges heard

by the International Commission—with the hearing occurring a month after Frye was informed of the more particular charges—did not violate the law. In finding that the claim of inadequate written charges is without merit, the Court now finds for the defendant and against the plaintiff on that issue.

III
WAS FRYE DISCIPLINED WITHOUT BEING AFFORDED A FULL AND FAIR HEARING?

The first argument advanced by the plaintiff is that a so-called trial *de novo* at the appellate level of the union hearing process was double jeopardy, and was thus a violation of his right to a full and fair hearing. As the plaintiff noted, this is a question of first impression; there is no authority to support such an argument. The law is clear that union disciplinary proceedings do not equate with a criminal proceeding, and the procedural safeguards assured in the latter are not necessarily required in the former. See, *Tincher, supra.*

As defendants argue, the complaints, Sivertson and Swanders, did not believe their trials at the Local level were fair in that Frye had appointed the trial committees. There is no evident prejudice or wrongdoing by the International Commission in convening what the plaintiff calls a trial *de novo.* This process is one in which the courts have generally acceded to union control, and there is no justification for declaring the process illegal as a denial of this plaintiff's rights under the statute.

The final argument raised by Frye is that any consideration of the Mix charges unfairly prejudiced the panel hearing the appeal of the Local trial committee's ruling. There is inadequate evidence before the Court to support this argument. The union appellate process described in this record is a less formal process than a proceeding in a court. No additional punishment was levied against Frye as a result of the Mix charges, and there is no reason to believe, from this

record, that he was prejudiced as a result of hearing evidence on those charges. The contention simply is without merit.

SUMMARY

In light of the foregoing, the Court finds there are no genuine issues as to material facts in the case before the Court, that motions for summary judgment were duly briefed, and that the motion for summary judgment filed by the plaintiff is hereby DENIED, and that the motion for summary judgment filed by the defendants is hereby GRANTED.

Dated this 10th day of April, 1984.

JUDGE GENE E. BROOKS
United States District Court
Southern District of Indiana